Michael E. Haglund, OSB No. 772030
email: mhaglund@hk-law.com
Shenoa L. Payne, OSB No. 084329
email: spayne@hk-law.com
HAGLUND KELLEY LLP
200 SW Market Street, Suite 1777
Portland, Oregon 97201
Phone: (503) 225-0777
Facsimile: (503) 225-1257

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

MATS JARLSTROM, an individual, Plaintiff, v. **CITY OF BEAVERTON**, an Oregon municipal corporation, Defendant.	Case No.: 3:14-cv-00783-AC **PLAINTIFF'S MEMORANDUM IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS**

I. INTRODUCTION

In this civil rights action, plaintiff challenges the legality of the City of Beaverton's yellow light intervals at signalized intersections, which are too short to allow drivers to drive through an intersection safely and expose plaintiff to a serious risk of injury or death when attempting to cross these intersections in a vehicle or as a pedestrian. As set out in the declaration of plaintiff Mats Jarlstrom filed herewith, plaintiff is a highly qualified electronics engineer who has studied traffic light timing at Beaverton intersections for the past nine months, including monitoring and taking of measurements at multiple intersections and an exhaustive

analysis of the available literature regarding traffic control device engineering and in particular the safety issues related to yellow signal timing in connection with traffic flow. Mr. Jarlstrom believes strongly that the evidence in this case will demonstrate that the yellow light intervals in Beaverton's intersections, which are too short by two seconds or more depending upon the intersection, are the cause of a higher level of accidents involving injury or death than would occur if the yellow light intervals were appropriately timed. Decl. of Mats Jarlstrom (Jarlstrom Decl.) ¶ 4.

In opposition to Defendant's Motion to Dismiss, plaintiff relies upon the authorities below and plaintiff's declaration. In addition, plaintiff today has moved for leave to file a First Amended Complaint, which clarifies the original complaint with additional specificity that addresses a number of points made in defendant's dismissal motion. Given the very early stage of this proceeding, the Motion for Leave to Amend should be granted and the amended complaint taken into consideration in addressing defendant's motion.

II. ARGUMENT

A. This Court has Subject Matter Jurisdiction over Mr. Jarlstrom's Complaint.

1. Legal Standard.

"For purposes of ruling on a motion to dismiss for want of standing, both the trial and reviewing courts must accept as true all material allegations of the complaint and must construe the complaint in favor of the complaining party." *Warth v. Seldin*, 422 U.S. 490, 501 (1975). "At the pleading stage, general factual allegations of injury resulting from the defendant's conduct may suffice, for on a motion to dismiss [the court] "presum[es] that general allegations embrace those specific facts that are necessary to support the claim."' *Lujan v. Defenders of Wildlife*, 504

Haglund Kelley LLP
200 SW Market Street, Suite 1777
Portland, OR 97201
Tel: (503) 225-0777 / Fax: (503) 225-1257
0000028478H073 PL03

U.S. 555, 561 (1992) (alteration in original) (quoting *Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 889 (1990)); *see also Lucas v. S.C. Coastal Council*, 505 U.S. 1003, 1014 n. 3 (1992) (cautioning that while at the summary judgment stage, the court "require[s] specific facts to be adduced by sworn testimony," a "challenge to a generalized allegation of injury in fact made at the pleading stage . . . would have been unsuccessful").

In FRCP 12(b)(1) proceedings, "a district court may make 'appropriate inquiry' beyond the pleadings to assure itself of its authority to hear the case. *Jones v. Thorne*, No. 97-1674-ST, 1999 WL 672222, at *6 (D. Or. Aug. 28, 1999) (J. Stewart); *see also Land v. Dollar*, 330 U.S. 731, 735 (1947). "It is within the trial court's power to allow or to require the plaintiff to supply, by amendment to the complaint or by affidavits, further particularized allegations of fact deemed supportive of plaintiff's standing." *Seldin*, 422 U.S. at 501.

2. Plaintiff has standing because there is a credible threat of future injury.

Defendant argues that plaintiff does not have standing to bring this action. Defendant's Mot. to Dismiss and Mem. of Law (Def. Mot.) at 2-5. According to defendant, Mr. Jarlstrom has not suffered any "injury in fact," and alleges only "conjectural injury" and a "generalized grievance." *Id.* As explained below, plaintiff has standing because he adequately alleges a credible threat of future injury.

Defendant first contends that plaintiff does not have standing because he "fails to allege . . . any actual injury that he has suffered." However, defendant applies an incorrect legal standard to this case, where plaintiff seeks only injunctive relief, not damages. Compl. at 5 (Prayer for Relief). The absence of past injury does not preclude Article III standing when a plaintiff seeks only prospective or injunctive relief. *Chapman v. Pier 1 Imports (U.S.) Inc.*, 631

Haglund Kelley LLP
200 SW Market Street, Suite 1777
Portland, OR 97201
Tel: (503) 225-0777 / Fax: (503) 225-1257
0000028478H073 PL03

F.3d 939, 951 (9th Cir. 2011). Rather, such a plaintiff can establish standing under Article III in one of two ways: (1) by demonstrating that he or she is realistically threatened by a repetition of the violation; or (2) by showing a credible threat of future injury. *Ibraham v. Dep't of Homeland Sec.*, 669 F.3d 983 (9th Cir. 2012).

Here, plaintiff pleads the following facts that demonstrate a credible threat of future injury: Mr. Jarlstrom resides in the City of Beaverton. Compl. ¶ 3. The yellow light intervals within city limits are too short to allow a safe stopping distance for vehicles and expose him, either as a pedestrian or as a driver or passenger in a vehicle, to a serious risk of injury or death when attempting to cross city intersections. *Id.* ¶¶ 1, 9, 12. The yellow light duration is too short and drivers, such as himself,[1] do not have adequate time to drive through the intersection safely. *Id.* ¶ 13, Ex. A.

To the extent that those allegations are insufficient to establish a credible threat of future injury, the Court may look beyond them to Mr. Jarlstrom's declaration. There, Mr. Jarlstrom explains that he resides in the Hyland Hills neighborhood of the City of Beaverton and drives on Beaverton roads approximately 10 or more times per week. Jarlstrom Decl. ¶¶ 2-3. In particular, Mr. Jarlstrom drives through several signalized intersections within the City of Beaverton on a regular basis, including Southwest Lombard Avenue and Southwest Allen Boulevard, Southwest Murray Boulevard and Southwest Allen Boulevard, Southwest Hall and

[1] Plaintiff will concede that Mr. Jarlstrom does not have standing to assert the rights of other drivers and pedestrians in the City of Beaverton. However, Mr. Jarlstrom does have standing to assert his own rights as a driver and pedestrian in the City of Beaverton, and his complaint adequately asserts those rights. Plaintiff has clarified in its proposed First Amended Complaint that he is only seeking to assert his own rights. *See* Plaintiff's Motion for Leave to File First Amended Complaint, Ex. A. ¶¶ 1, 19, 23-26.

Haglund Kelley LLP
200 SW Market Street, Suite 1777
Portland, OR 97201
Tel: (503) 225-0777 / Fax: (503) 225-1257
0000028478H073 PL03

Southwest Allen Boulevard, and Southwest Tualatin-Valley Highway and Southwest Murray Boulevard. *Id.* ¶ 3. Mr. Jarlstrom also rides through those intersections as a passenger with his wife. *Id.*[2] Therefore, Mr. Jarlstrom's exposure to the risk of danger is great.

Nonetheless, defendant argues that plaintiff's future risk of injury is "conjectural." Def. Mot. at 4. Defendant is once again mistaken. The Ninth Circuit has held that an injury is "actual or imminent" where there is a "credible threat" that a "probabilistic harm" will materialize. *Natural Resources Defense Council v. U.S. E.P.A.*, 735 F.3d 873, 878 (9th Cir. 2013). In *NRDC*, the Ninth Circuit held that the plaintiffs carried their burden to demonstrate that there was a credible threat that their members would be exposed to a toxic product as a consequence of the EPA's decision to conditionally register a product. *Id.* Because it was nearly impossible for the NRDC's members to eliminate the product from their children's lives, it was likely that the threat would materialize. *Id.* at 878-79. The Court distinguished *City of Los Angeles v. Lyons*, 461 U.S. 95 (1983), where the probability that the plaintiff would be exposed to the risk of harm was low because the plaintiff was unlikely to have another encounter with a member of the Los Angeles Police Department that would lead to another officer administering an allegedly injurious chokehold.

Here, Mr. Jarlstrom's future harm is neither conjectural nor hypothetical. Like the harm in *NRDC*, it is nearly impossible for Mr. Jarlstrom to eliminate his encounters with the unsafe yellow light signals at the signalized intersections in the City of Beaverton. As a resident of the City of Beaverton, and a person who drives through signalized intersections several times per

---

[2] Plaintiff has moved for leave to amend his complaint to add the above facts as allegations to his complaint. *See* Plaintiff's Motion for Leave to File First Amended Complaint, Ex. A ¶¶ 6-13.

Haglund Kelley LLP
200 SW Market Street, Suite 1777
Portland, OR 97201
Tel: (503) 225-0777 / Fax: (503) 225-1257
0000028478H073 PL03

week, it would be incredibly difficult for him to ensure that he would not be exposed to the short yellow light intervals. Unlike the plaintiff in *Lyons*, the risk is not low because Mr. Jarlstrom does not have to engage in criminal activity to have an unlikely encounter with the allegedly injurious yellow lights. Rather, he merely has to go about his daily life and engage in lawful activity such as driving or walking through the City.

Although the City argues that the harm is conjectural because Mr. Jarlstrom has not demonstrated "one factual incidence of injury," this Court is required to take the allegations in the complaint as true in determining the injury component of standing. *Defenders of Wildlife*, 504 U.S. at 561 (1992). Even if it were not required to do so, however, plaintiff supports this motion with additional facts to support his claim that injury is imminent and concrete. Mr. Jarlstrom is a self-employed, experienced and knowledgeable electronics engineer. *See* Jarlstrom Decl. ¶¶ 1, 4. Mr. Jarlstrom has spent significant time studying and analyzing the traffic light timing at intersections in the City of Beaverton. *Id.* ¶ 4. That analysis has involved monitoring relevant intersections, taking measurements of the timing, and analyzing available literature regarding the engineering of traffic control devices and, in particular, the safety issues related to yellow signal timing in connection with traffic flow. Based on his analysis, plaintiff has a reasonable basis to allege that the yellow light intervals are the cause of accidents in signalized intersections. *Id.*[3] Therefore, it is highly likely that Mr. Jarlstrom would be unable to avoid the harm that he has alleged in his Complaint.

:::

---

[3] Plaintiff's proposed First Amended Complaint alleges that "[o]n information and believe, the short duration of yellow light intervals is the direct cause of a significant number of accidents at signalized intersections within the City of Beaverton." Plaintiff's Motion for Leave to File First Amended Complaint, Ex. A ¶ 18.

Haglund Kelley LLP
200 SW Market Street, Suite 1777
Portland, OR 97201
Tel: (503) 225-0777 / Fax: (503) 225-1257
0000028478H073 PL03

Furthermore, defendant contends that Mr. Jarlstrom's allegations are nothing more than a generalized grievance. Def. Mot. at 4. It is true that Mr. Jarlstrom suffers a credible threat of injury that all citizens of the City of Beaverton share. However, the United States Supreme Court has clarified that "standing is not to be denied simply because many people suffer the same injury." *U.S. v. Students Challenging Regulatory Agency Procedures (SCRAP) et. al.*, 412 U.S. 669 (1973). "To deny standing to persons who are in fact injured simply because many others are also injured, would mean that the most injurious and widespread Government actions could be questioned by nobody. We cannot accept that conclusion." *Id.*; *see also Federal Election Com'n v. Akins*, 524 U.S. 11, 25 (1998) ("where harm is concrete, though widely shared, the Court has found "injury in fact.").

Finally, defendant treats this action as a "red light camera" case. *See* Def. Mot. at 3 (noting that other circuits have held that individuals who received tickets from red light cameras nevertheless lacked standing). It is not. Mr. Jarlstrom is not challenging defendant's right light camera system. He does not argue that the City's red light camera ordinance is unconstitutional or that the City does not have a right to issue tickets based on its red light camera system. Rather, Mr. Jarlstrom challenges the duration of the city's *yellow* light intervals at signalized intersections, which he alleges exposes plaintiff to a serious risk of injury or death when attempting to cross the intersections as pedestrians or in a vehicle. Compl. ¶ 1. Therefore, the red light camera cases that defendant relies on are inapposite.

In conclusion, Mr. Jarlstrom's allegations plausibly demonstrate a credible threat of future harm to Mr. Jarlstrom that is neither hypothetical nor conjectural. Therefore, he has standing under Article III to pursue this action against the City of Beaverton.

Haglund Kelley LLP
200 SW Market Street, Suite 1777
Portland, OR 97201
Tel: (503) 225-0777 / Fax: (503) 225-1257
0000028478H073 PL03

3. Plaintiff has adequately alleged a violation of federal law under 42 U.S.C. § 1983.

Defendant contends that Mr. Jarlstrom fails to allege a federal claim, stripping this Court of subject matter jurisdiction. Def. Mot. at 5. According to defendant, Mr. Jarlstrom bases his section 1983 claim on a violation of Oregon law, and not federal law. *Id.* As defendant recognizes in its own motion, however, Mr. Jarlstrom's complaint alleges a violation of 42 U.S.C. § 1983 based on a violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution. Def. Mot. at 7; *see also* Compl. ¶¶ 1 ("This is a civil rights case under Section 1983 of the Civil Rights Act of 1964"), 12 (yellow light duration exposes plaintiff to serious risk of injury or death), 9 & 15 (yellow light duration is too short to allow plaintiff sufficient time to drive through intersection safely). The Fourteenth Amendment protects against "unjustified intrusions on personal safety," by state actors. *DeShaney v. Winnebago Cnty. Dep't of Soc. Servs.*, 489 U.S. 189, 195 (1989); *see also Kennedy v. City of Ridgefield*, 439 F.3d 1055, 1061 (9th Cir. 2006) ("It is well established that the Constitution protects a citizen's liberty in her own bodily security."). Although state actors generally do not have a constitutional duty to protect an individual from harm by a private actor, as explained more thoroughly below, Mr. Jarlstrom alleges that defendant's conduct meets the danger creation exception. *Johnson v. City of Seattle*, 474 F.3d 634, 638 (9th Cir. 2007). If the danger creation exception is met, a claim arises under § 1983. *Henry A. v. Wilden*, 678 F.3d 991, 998 (9th Cir. 2012); *Penilla v. City of Huntington Park*, 115 F.3d 707, 710 (9th Cir. 1997). Mr. Jarlstrom therefore pleads a federal claim and this Court has subject matter jurisdiction.

:::

:::

Haglund Kelley LLP
200 SW Market Street, Suite 1777
Portland, OR 97201
Tel: (503) 225-0777 / Fax: (503) 225-1257
0000028478H073 PL03

B. Plaintiff States a Claim For Relief under 42 U.S.C. § 1983.

1. Legal standard under Fed. R. Civ. P. 12(b)(6).

A motion to dismiss for failure to state a claim pursuant to Fed. R. Civ. P. 12(b)(6) shall be denied where the complaint sets forth "enough facts to state a claim to relief that is plausible on its face." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). The plausibility standard is not akin to a probability requirement. Id. at 556; *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009). The only requirement is that the factual allegations and reasonable inferences must be "plausibly suggestive" of a claim entitling the plaintiff to relief. *Moss v. U.S. Secret Serv.*, 572 F.3d 962, 969 (9th Cir. 2009). For the purposes of a motion to dismiss, the complaint must be construed liberally in favor of the plaintiff, and the complaint's allegations accepted as true, even if "doubtful in fact." *Twombly*, 550 U.S. at 555; *see also Neitzke v. Williams*, 490 U.S. 319, 327 (1989) ("Rule 12(b)(6) does not countenance . . . dismissals based on a judge's disbelief of a complaint's factual allegations.").

2. Plaintiff's allegations plausibly suggest that defendant's conduct places plaintiff in danger in deliberate indifference to his safety.

Section 1983 provides in relevant part:

> Every person who, under color of any statute, ordinance, custom, or usage, of any State or Territory or the District of Columbia, subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in action at law, suit in equity, or other proper proceeding for redress . . . .

To establish a claim under § 1983, a plaintiff must initially allege (1) a deprivation (2) of some protected federal right (3) under color of state law. *Parratt v. Taylor*, 451 U.S. 527, 536-537 (1981). Municipalities are liable for deprivations of life, liberty, or property that rise to the

Haglund Kelley LLP
200 SW Market Street, Suite 1777
Portland, OR 97201
Tel: (503) 225-0777 / Fax: (503) 225-1257
0000028478H073 PL03

level of a "constitutional tort" under the Due Process Clause of the Fourteenth Amendment. *Johnson*, 474 F.3d at 638.

The Fourteenth Amendment protects against "unjustified intrusions on personal safety," by state actors. *DeShaney*, 489 U.S. at 195; *Hinkle v. Blacketter*, No. 07-CR-13-BR, 2008 WL 1745855, at *4 (D. Or. Apr. 11, 2008) (J. Brown). However, generally, a state actor has no constitutional duty to protect the public from harm inflicted by third parties. *Id.* at 195-97. There are two exceptions to that general rule: (1) the special relationship exception; and (2) the danger creation exception. *Johnson*, 474 F.3d at 639.

To state a claim under the "danger-creation" exception against a state actor, a plaintiff must plead sufficient facts that demonstrate that state action affirmatively places the plaintiff in a position of danger -- *i.e.*, the state action creates or exposes the plaintiff to a danger which he or she would not otherwise face. *Johnson*, 474 F.3d at 639; *Morgan v. Gonzales*, 495 F.3d 1084, 1093 (9th Cir. 2007). In addition, the state actor must have acted with deliberate indifference to the known or obvious danger in subjecting the plaintiff to such danger. *See L.W. Grubbs (Grubbs II)*, 92 F.2d 894, 900 (9th Cir. 1996). There is not an additional requirement that the conscience be

> shocked by deliberate indifference, because the use of the subjective epithets as gross, reckless, and shocking sheds more heat than light on the thought processes courts must undertake in cases of this kind. Deliberate indifference to a known, or so obvious as to imply knowledge of, danger, by a supervisor who participated in creating the danger, is enough. Less is not enough.

Id.

Here, Mr. Jarlstrom's theory under the danger creation exception is a viable one, because the City is affirmatively creating the increased risk and danger that a third party vehicle will

Haglund Kelley LLP
200 SW Market Street, Suite 1777
Portland, OR 97201
Tel: (503) 225-0777 / Fax: (503) 225-1257
0000028478H073 PL03

enter an intersection on a green light and seriously harm Mr. Jarlstrom while he is crossing the intersection (having entered during a too short yellow light interval) as a driver, passenger, or pedestrian. First, viewing the allegations in the light most favorable to Mr. Jarlstrom, his allegations sufficiently allege that defendant affirmatively exposes him to a danger which he would not otherwise face. In that regard, Mr. Jarlstrom alleges that defendant operates the traffic control devices throughout the City of Beaverton and has "the final authority over the timing of yellow light and red light intervals at signalized intersections within its boundaries." Compl. ¶ 6. He further alleges that the City utilizes yellow light intervals that are "too short to allow a safe stopping distance for vehicles that are too close to the edge of the intersection to stop safely when the yellow light first illuminates." Compl. ¶ 9. Because of the City's affirmative action in setting that short duration of the yellow lights, Mr. Jarlstrom is exposed to a "serious risk of physical injury or death" because there is an increased risk that a third party will enter the intersection "with a green light before a vehicle attempting to safely drive through an intersection during the yellow light interval has sufficient time to accomplish the transit." Compl. ¶12.[4] Therefore, Mr. Jarlstrom meets the first test. *See, e.g., L.W. v. Grubbs*, 974 F.2d 119, 122 (9th Cir. 1992) *(Grubbs I)* (state actor "significantly increased both the risk of harm to the plaintiff,

[4] Plaintiff moves to amend his complaint to also allege that he is at risk of being hit by a vehicle because another vehicle is driving through an intersection during the yellow light interval and the light turns red before that vehicle has sufficient time to accomplish that transit while plaintiff begins to enter the intersection with a pedestrian "walk" signal, or plaintiff himself is driving through an intersection during the yellow light interval and the light turns red before he has had sufficient time to accomplish that transit and the other vehicle has a green light. Plaintiff's Motion for Leave to File First Amended Complaint, Ex. A ¶ 19. Plaintiff also alleges that, on information and belief, "the short duration of yellow light intervals is the direct cause of a significant number of accidents at signalized intersections within the City of Beaverton. *Id.* ¶ 18.

Haglund Kelley LLP
200 SW Market Street, Suite 1777
Portland, OR 97201
Tel: (503) 225-0777 / Fax: (503) 225-1257
0000028478H073 PL03

and the opportunity for third party to commit the harm") (quoting *Cornelius v. Town of Highland Lake*, 880 F.2d 348, 354-59 (11th Cir. 1989).

Defendant contends, however, that Mr. Jarlstrom provides no factual support of the danger he alleges. Def. Mem. at 8. However, Mr. Jarlstrom provides factual allegations that the short duration of the lights are not in compliance with Oregon law and also provides a specific example of how a driver will not be able to make it through an intersection based on the yellow timing of the light. Compl. ¶¶7-9, 13 & Ex. A. Mr. Jarlstrom's allegations are not only required to be accepted as true, but are factually supported.

Mr. Jarlstrom's allegations also meet the deliberate indifference test. To meet that test, a defendant must "consciously disregard a substantial risk of serious harm." *Hammel v. Tri-County Transp. Dist. of Oregon*, 955 F. Supp. 2d 1205 (D. Or. 2013). First, the risk of serious harm must be substantial. *Id.* at 1213. Here, Mr. Jarlstrom alleges that there is a serious risk of injury or death, that drivers do not have enough time to pass through the intersection after a yellow light has signaled, placing him at risk of serious injury. Compl. ¶¶ 1, 12.

Second, the state actor must consciously disregard a substantial risk of serious harm. *Id.* This standard is met if the danger is so obvious as to imply knowledge of the danger. *Kennedy*, 439 F.3d at 1064. Plaintiff alleges that defendant has control over the timing of its lights and that those lights are too short to safely allow persons to travel through the intersection during a yellow light interval. Compl. ¶¶1, 6, 12. If an individual does not have enough time to transition through an intersection before another vehicle enters the intersection with a green light, the danger of a vehicle crash is obvious. Nonetheless, plaintiff has moved to amend his complaint to add allegations that specify that, beginning on or about September 3, 2013, plaintiff

Haglund Kelley LLP
200 SW Market Street, Suite 1777
Portland, OR 97201
Tel: (503) 225-0777 / Fax: (503) 225-1257
0000028478H073 PL03

appeared before the Beaverton City Council at least thirteen times to notify defendant of the serious risks that the short yellow light intervals pose to plaintiff and other drivers that enter the signalized intersections and, despite knowledge of the serious risks, defendant declined to lengthen the duration of the yellow light intervals. *See* Plaintiff's Motion for Leave to File First Amended Complaint, Ex. A ¶¶ 21-22. Therefore, if the danger is not obvious, plaintiff would also meet his burden to establish that defendant knew about the risk, but ignored it.[5]

In conclusion, plaintiff adequately pleads a danger-creation exception to the general rule that a state actor has no duty to protect an individual from harm from third parties and this Court should decline to dismiss its complaint for failure to state a claim.

III. CONCLUSION

For the reasons stated above, this Court should deny defendant's Motion to Dismiss in its entirety.

DATED this 3rd day of July, 2014.

HAGLUND KELLEY LLP

By: /s/ Michael E. Haglund
Michael E. Haglund, OSB No. 772030
mhaglund@hk-law.com

Attorneys for Plaintiff

[5] In support of its contention that Mr. Jarlstrom fails to state a claim under § 1983, defendant again cites to red light camera cases. Def. Mem. at 6. Those cases determined that no one has the fundamental right to run a red light. *See, e.g., Idris v. City of Chicago, Ill.*, 552 F.3d 564 (7th Cir. 2009). Again, those cases are inapposite because Mr. Jarlstrom is not challenging defendant's *red light* camera system but, merely, the unsafe duration of its yellow light system.

Haglund Kelley LLP
200 SW Market Street, Suite 1777
Portland, OR 97201
Tel: (503) 225-0777 / Fax: (503) 225-1257
0000028478H073 PL03

CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of July, 2014, I served the foregoing **PLAINTIFF'S MEMORANDUM IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS**, on the following:

Gerald L. Warren
Law office of Gerald Warren
901 Capitol Street, NE
Salem OR 97301

Attorney for Defendant

by the following indicated method(s):

☐ by **mail** with the United States Post Office at Portland, Oregon in a sealed first-class postage prepaid envelope.

☐ by **email**.

☐ by **hand delivery**.

☐ by overnight mail.

☐ by **facsimile**.

☒ by the court's Cm/ECF system.

/s/ Michael E. Haglund
Michael E. Haglund, OSB No. 772030

Haglund Kelley LLP
200 SW Market Street, Suite 1777
Portland, OR 97201
Tel: (503) 225-0777 / Fax: (503) 225-1257